HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Equality Act 2010 and Disability

Inquiry on

EQUALITY ACT 2010 AND DISABILITY

Evidence Session No. 12 *Heard in Public* *Questions 105 - 112*

TUESDAY 10 NOVEMBER 2015

4.20 pm

Witness: Paul Breckell

Members present

Baroness Deech (Chairman)
Baroness Brinton
Baroness Browning
Baroness Campbell of Surbiton
Lord Foster of Bishop Auckland
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley

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Examination of Witness

Paul Breckell, Chair, Disability Charities Consortium, and Chief Executive, Action on Hearing Loss

Q105 The Chairman: We welcome Mr Breckell, who is the chief executive of Action on Hearing Loss and chair of the Disability Charities Consortium, so he has a wide experience of disability charities, not just in the hearing area. This session is open to the public. A webcast will go out live and will be subsequently accessible on the parliamentary website. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after the session you will be sent a copy of the transcript to check it for accuracy. It would be helpful if you could advise us of corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or you have any additional points to make, you are welcome to submit supplementary evidence. We do not have that much time, and you may find afterwards that you wish you had said this, that or the other.

Members here will declare any relevant interests they have before their first question. To save time, because there are so many I will list the interests of Baroness Campbell. She is a patron of Just Fair, patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and is the recipient of a social-care personal budget, disability living allowance and Access to Work. She was a Disability Rights Commissioner throughout the life of the Disability Rights Commission and the Commissioner of the Equality and Human Rights Commission for three years.

Q106 Baroness Pitkeathley: I am going to take you back, Mr Breckell, to 2008, but first I declare that the only interest I have is as vice-president of Carers UK. I want to take you back to 2008, when the Disability Charities Consortium told the Commons Work and Pensions Committee that, "12 years of the DDA"—the Disability Discrimination Act—"have not been enough to address prejudice against, eliminate discrimination of, and promote equality for disabled people". We are now in the 20th anniversary of the disability discrimination legislation. Has the Equality Act, in your view, helped or hindered further progress that you hoped at that time would be made, and, if so, how?

Paul Breckell: The short answer is that it has absolutely helped, on balance. Both Action on Hearing Loss, or RNID as we were at the time, and the Disability Charities Consortium had involvement in drafting the original Bill, so we remain hugely supportive of the Equality Act. We think that it has made a big difference, as have things that have come with it, such as the public sector equality duty.

That is the headline, but underneath that some issues remain for us in how the Act is enforced and some of the regulations and legislation that have come out of it. That is where we think progress has been more limited. For example, I think there is a lack of general public awareness of the Equality Act, particularly how it relates to disabled people. Certainly Action on Hearing Loss and other members of the DCC would still say that some of the people they work with and for still talk about the DDA, so I think that more needs to be done to make clear the importance of the Equality Act. We also think there has been a lack of leadership sometimes from the senior leadership of public bodies, particularly on the public service requirements in relation to the Act. One recent example is the fact that the Equality Act was cited in relation to the Red Tape Challenge. We think that was incredibly unhelpful, as it has the potential to reduce the importance of the Act in the eyes of public service providers and in the private sector and beyond because they see it in some way as a bureaucratic burden, whereas of course it should be an Act that is incredibly enabling, supporting disabled people to live a full life and contribute to society, as is their right.

From our point of view the Act is very positive, and we want to see that built upon, but we think there are some issues with the promotion of it and the regulation under it.

Baroness Pitkeathley: May I just ask a follow-up question about leadership? Where would you have expected that leadership to come from, which has, as you said, been a disappointment to you?

Paul Breckell: There is obviously political leadership not just on what happens legislatively but, from an executive perspective, on the way disability and equality legislation is talked about. We think that some of the rhetoric over that period of time has been challenging for disabled people.

We recognise that the Equality and Human Rights Commission, which I am sure we will come on to talk about, is working with very limited resources, and that has been one of the challenges, so there is an issue about resourcing there. We know that it is also challenging for public sector and business leaders to look right through the system, to get on the front foot in relation to disability and to respond very positively in relation to the equality legislation rather than always being on the back foot in the way legislation is enacted and used. We think it is really important that it is in place, and litigation is there as a right, so that is welcome, and people should have access to that. But this is about the steps that are put in place to make sure that people are aware of their rights and that in flexing their muscles they do not need to take it all the way to litigation.

Q107 Baroness Brinton: On 27 October, the British Deaf Association argued strongly for greater legal recognition for British Sign Language. Do you agree that this is the highest priority? Which other measures are needed to enable deaf people and people with hearing loss to participate in society on an equal basis? How should the cost of adjustments, linguistic or otherwise, be met?

Paul Breckell: We think it is important, and we think the legal recognition of BSL would provide real encouragement to organisations, particularly those working with people who are BSL first-language users. If we draw some parallels to some of the things, such as some of the language recognition Acts that we have seen in relation to Welsh or Gaelic, we can see what an impact that might have. That would be the first thing to say.

Obviously we are watching with real interest what happens now that the BSL Bill has become an Act in Scotland. Actually, that Act does not provide much legally over and above what is already in place in equality legislation, but it does provide real encouragement. In a sense, as I alluded to in answer to that first question, it is about the wider context that is set. We think

there is something very important in relation to that. While I absolutely respect the BDA's position, what is important—and this is about "both … and" rather than "either/or"—is to talk about British Sign Language, which is very important for people who are first-language sign language users, in the context of hearing loss more broadly. There are 11 million people in the UK with some degree of hearing loss, of which 6 million people have hearing loss to the extent that they would benefit from wearing a hearing aid or, indeed, their hearing loss is too profound to benefit from wearing a hearing aid. So that is 6 million people, 900,000 of whom would be considered to be profoundly deaf. The numbers vary, but between one in 10 and one in 20 would be first-language British Sign Language users, so BSL recognition is very important for that group of disabled people. Yet another 800,000 to 850,000 people who are profoundly deaf have access issues that also need to be addressed in relation to equality legislation, not just through sign language recognition. It is a "both … and" rather than "either/or", so it is important but we do not think it is the only thing that is important.

Baroness Brinton: Could I ask your views on the cost of providing British Sign Language in the recent Cordell v Foreign and Commonwealth Office case and the implications of that?

Paul Breckell: In the broader sense, from a public policy perspective there are a couple of choices here. There is one model—the Scandinavian model—which I know the BDA has already talked to you about, where the requirements and the responsibilities are effectively centralised so that sign language provision is being provided. That is pretty affordable, but again it is about there being a political intent to make that the case, and that is something we do not have at the moment.

The other alternative, which is obviously where we are in terms of UK legislation, is for the responsibility to be on individual employers, service providers, et cetera, underpinned by equality legislation. Of course, the challenge then—and this was the issue in Jane Cordell's case—is that it becomes a matter of defining "reasonable adjustment", which can be very challenging. By definition, human aids to communication, be that sign language interpreters, lip speakers, or speech-to-text reporters, are professionals and therefore come with a professional cost. In a job that is communication-rich, like that of an ambassador or anybody who is trading on ideas and communication, which is the case in many leadership roles, a communication support bill is clearly going to come with that.

From our perspective, at Action on Hearing Loss, we think there is an important principle at play here, because by supporting people—whether it be through Access to Work or support from the employer—there are the individual human rights of the person under the Equality Act, but there is also something about those people being role models for other deaf and disabled people in society. I am a pragmatist, and I do not think that the political will in this country is for a centralised Scandinavian-style system. I think it is for legislation underpinning. That being the case, it is important that the legislation has sufficient strength to provide people with support so that they get access from their employer or from service providers.

Q108 Baroness Browning: I should have declared in the earlier session, Madam Chairman, the fact that I have voluntary offices held with the National Autistic Society, Research Autism and the Alzheimer's Society.

How effective has the Equality Act been in addressing discrimination against those with mental health problems? Are there particular challenges that differ from other forms of disability? Perhaps I might just wrap into that the general invisible disabilities—the ones that are not apparent when somebody walks into a room.

Paul Breckell: Thank you for that question. Again, I will start with the positive and then share the challenge too. The fact that the Equality Act broadened the definition of disability to reflect better mental health in particular is very welcome, but there are specific issues— and both the National Autistic Society and Mind are members of the Disability Charities Consortium. A fellow member, Mind—I believe Paul Farmer, the chief executive of Mind, has also given evidence—has certainly identified, through its legal line in the past few years, a variety of issues for people who are trying to access equality legislation in relation to mental health. They are some of the issues that you heard about in the first session, such as people being put off by huge cuts to legal aid, the cost of legal advice, access to the judicial system. People with a presenting mental health condition, or indeed autism, sometimes just do not feel able to challenge and need a lot of support in order to be able to challenge. This might be different for someone with, for example, sensory loss or physical disability. So we do think there are some specific issues there to make sure that discrimination does not go unrecorded or unchallenged. This is about making sure that the system provides support along the way in order that people get access to justice.

Baroness Browning: Could I just ask a supplementary to that? There will be times when some of this particular group are discriminated against and there will be an issue of capacity at that time. Do you have any advice for the Committee about how we can assist those who need to be assessed for capacity when they are discriminated against, and how do you see the advocacy that they currently receive to help them with that?

Paul Breckell: First, I would not profess to be an expert on mental health, because obviously my particular area of interest is sensory loss. Having said that, from what I understand it really is about support at the very initial stages where people are considering the claim that they are making, because you are absolutely right that there can be potential issues about capacity. That also sometimes means that there needs to be more flexibility in relation, for example, to timescales. Where someone has a fluctuating condition, particularly a fluctuating mental health condition, there may be different points in their interrelationship with the service provider, their employer, or indeed in the legal process at which they are in a position to progress their claim, whether formally or informally. It is about being person-centred and flexible, but on the specifics I would defer to the written and verbal submissions that you have already had from other colleagues in the DCC.

Q109 Baroness Campbell of Surbiton: In terms of your role in the Disability Charities Consortium, we have heard from other people who have come to give evidence that disabled people feel very much alone in those initial stages. Do you think there is a role for disability organisations to support disabled people in those initial stages, or do you think that is too much of a burden for them to take on?

Paul Breckell: There is a role to be played, and in different ways different member charities within the DCC fulfil elements of that role. For example, Action on Hearing Loss has an information and advice line, but we do not go as far as undertaking legal casework ourselves. Mind is in a similar situation to us. We know that Disability Rights UK, for example, which is also a member, has gone a little bit further in the individual work that it will do.

There is a challenge for voluntary organisations in expertise and capacity. Action on Hearing Loss did not decide to cease doing individual casework in about 2009 because of a lack of commitment to it. With a very small team in what can be a relatively complex legal area, we just did not think that we could resource the necessary skills to do it well. We were much better placed to be a campaigning advocate and a sign-poster rather than working on a case-by-case basis. One of the roles that we do play—again, both formally and informally—is in

providing advice and sign-posting, which we do through our helpline and through our community-based services. There is a lot of peer support and mentoring, and we also create a bit of an ecosystem where people with hearing loss and disabled people can talk to one another. But for us as a charity, a mixture of capacity and capability has certainly put us off actually proceeding with individual elements of legal casework, and I think that is the case with the majority of the members of the DCC.

Baroness Campbell of Surbiton: So is that a no, then?

Paul Breckell: I think the response is that we go a certain distance. After that it is too challenging, and we are better served by a mixture of the legal profession and support from the Equality and Human Rights Commission. We have a role to play, but I do not think it extends to individual casework. It certainly does not in our case.

The Chairman: You said "we". Is there a difference between the organisations for the disabled and the organisations run by the disabled themselves?

Paul Breckell: This is probably a seminar in itself. At Action on Hearing Loss we talk about the fact that we work with and for people who are deaf, have hearing loss and tinnitus, so I suppose that all I can do is describe what we do. Some people would say that that makes us for the disabled, some people would say that means that we are governed by people who are disabled. We have a membership of 15,000 people, the majority of whom will be deaf or have hearing loss themselves, but it is not a prerequisite: people choose to join because they have an interest in the work of the charity. In turn, the majority of our trustees are elected by our membership. Again a majority either has direct personal experience—ie they have hearing loss, tinnitus or are deaf themselves—or direct family experience.

One of the members of the DCC is Disability Rights UK, which works as the umbrella for disabled people's organisations or works alongside disabled people's organisations, so it has a slightly different approach. But I genuinely think—and I have no doubt there are people in the room with more expertise than me—that there is a continuum in the way that we work, rather than there being such a stark, "You are either a disabled people's organisation or not". That would be what I would contest.

The Chairman: I just wondered, listening to Lady Campbell, whether more support was available from one type of organisation than the other. It is a theme that has come up from time to time.

Paul Breckell: In a sense, you will obviously need to ask individual DPOs—and I am sure you will—but I do think there is potentially a role for DPOs to play. Regarding equality legislation, at the end of the day it is an individual who is being discriminated against, so it is really important that there is a route for the individual. But there are potentially opportunities for support, which are provided in different ways. As I say, as different voluntary organisations we can play a range of roles. The particular work that we do at the Disability Charities Consortium is by no means us trying to merge together eight charities, which we do not think that would serve the people that we work with or for well. It is about allowing us to present a strong collective voice in our work, particularly with government. The majority of work that we do together is about the way we relate to, for example, the Department for Work and Pensions and the ODI, and some of the work we can do together to get more access than we could as individual charities.

Q110 Lord McColl of Dulwich: What is your relationship with the Equality and Human Rights Commission, and would Action on Hearing Loss and the Disability Charities Consortium like to see it doing more?

Paul Breckell: We have had only limited engagement as Action on Hearing Loss, and that has mainly been through the Equality and Diversity Forum, which the EHRC attend. We have had some instances—and I know that other DCC members have too—relating to advice, particularly working with individual sector areas. We did some work, for example, on access to banking, and worked closely alongside EHRC.

The things that we would like the EHRC to do at the moment—again, this comes with the caveat that we recognise that resourcing has been really tight and really constrained—include publishing a summary of potential and completed cases relevant to disability. We think there is that role, because of case referral to the EHRC, for capturing that information. This would also help to build an understanding of what does and does not constitute a reasonable adjustment, which has been one of the challenging issues in interpreting legislation. There has been a lack, both under the last Parliament and this one, of any publication of statutory guidance, which I know the EHRC has done in the past. Statutory guidance in relation to the public sector equality duty would be particularly welcome, so more could be done there. Again, partly because of resource constraints, there is less of a focus on disability at the EHRC since the change of governance arrangement. That was an unhelpful step as well, as having a separate disability rights committee made a big difference. I recognise some of the challenges and some of the context, but we do think there are some specific areas where more could be done.

Lord McColl of Dulwich: I should have declared an interest. I am the author of the McColl report and work for charities concerned with disability.

Q111 The Chairman: The final question is from me. How effective is the Office for Disability Issues in improving implementation of the Equality Act in practice?

Paul Breckell: It is a mixed bag. It would be fair to say that the Disabilities Charity Consortium has had good access, and in that sense has had a good relationship with the ODI. We welcome the fact that there is a specialist department giving attention to disability issues. In fact, one of main reasons why we come together as the DCC is because it has been the vehicle through which we have regularly met current and previous Ministers for Disabled People. From that point of view we have had some access, which has been welcome.

We have some concerns about the ODI's level of authority. Of course the department needs to sit somewhere, but it sits within DWP. The cross-government role is so, so important for the ODI, because disabled people live their lives and this is not confined to the disabled person as an employee, or an Access to Work claimant, or somebody who is receiving benefits or social security. It is much broader than that. Certainly there is a slight change of emphasis in that we now have a Minister for Disabled People who is not a Minister of State. That is different to the way it was in the previous Parliament. As I say, while we have had very positive relationships, we worry about whether that undermines some of the influence of the cross-government role as well.

We have good relationships and we get some access. We are a collection of voluntary organisations and campaigning organisations. We are not the elected Government, so at the end of the day we make our point and we get listened to, but on the question of whether that changes things, sometimes it does and sometimes it does not. We will keep on working with and for the people we work with and for. We would like to see the ODI doing more to really exercise that cross-governmental role into issues such as health and social care and transport—the day-to-day parts of government that have an impact on the lives of disabled people.

The Chairman: If you were starting from scratch, where would you place responsibility for disabled persons in the entire ministerial and departmental structure?

Paul Breckell: It needs to be somewhere that gives it cross-government access. That puts it in the Cabinet Office or somewhere similar. Otherwise, wherever one puts it, it is pigeonholed. One of the real challenges with it being within DWP—although, as I say, we have welcomed the fact that there is the ODI—is that it takes one small slip of rhetoric to move from there to talking about disabled people as benefit claimants. That is not just helpful, and we think it has sometimes been misused over the years since the recession. If you were to move it into the Department of Health, or to health and social care, you would start to medicalise disability, which again we think would be incredibly unhelpful and would not respect the fact that we are talking about people first and foremost who happen to be disabled people. So we think it would be better placed in a genuinely cross-government position.

Q112 The Chairman: At a time when cuts are being made to the budgets of various government departments, is there loyalty within the Office for Disability Issues, or indeed with the Minister for Disabled People, towards carrying out the cuts, or is it about trying to protect disabled people from the effect?

Paul Breckell: You would have to ask Justin Tomlinson. At the end of the day a government Minister is a government Minister, and their loyalty ultimately arguably should be to the Government and ultimately to their constituents. As I say, we see the Minister for Disabled People and the ODI trying to positively represent the views of disabled people across the Government. Let me give you two examples. The first example is Access to Work. We have campaigned on the cap that has now been imposed on Access to Work. We think that is misguided and that imposing a cap is basically saying, "There comes a point when supporting a disabled person in the workplace is not affordable, even if we have done the proper piece of assessment work and we have come to the conclusion that this is what is required". It is a point of principle, and we just do not think that is acceptable or appropriate. While we made some representations, the majority of which were to the previous Minister for Disabled People, and we got some concessions, at the end of the day the loyalty in that case was to deliver to the DWP budget.

If you will excuse me, I have a hearing-loss-specific issue, although I have been trying to make sure that I represent whole of the DCC. We are at the moment fighting hard against cuts to hearing-aid provision. Hearing aids have been free at the point of access on the NHS since 1948. They are an incredibly cost-effective intervention. They only cost £90 a pair. The whole intervention costs £400 over three years. In one clinical commissioning group in north Staffordshire, hearing aids are now not provided free at the point of access to those who need them, which we think is an absolute outrage. We also think it is a false economy. In that instance, we have seen the ODI in a sense do what it can in writing some letters and making ministerial colleagues within the Department of Health aware. The challenge for us is that the nature of health commissioning in England in particular within the UK is that everything is decentralised to local level and there are not many central levers in place. In that sense I suppose we have had support, but it has not been particularly effective support. Make of that what you will, but our experience is that when push has really come to shove and there have been austerity changes to be made, our big concern as the DCC is that sometimes disabled people have just been swept away in the stroke of an accountant's pen.

The Chairman: Thank you very much, Mr Breckell. Thank you for coming, thank you for your written evidence, and thank you for sharing your expertise with us. It has been very valuable. Thank you.

Paul Breckell: Thank you very much for the opportunity.